

(1996) 04 GAU CK 0011
In the Gauhati High Court
Case No : Civil Rule No. 25 of 1993

TBC Vulmawia

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 16-04-1996

Acts Referred:

Central Civil Services (Temporary Services) Rules, 1965 — Rule 5(i), 5(i)
Constitution of India, 1950 — Article 226, 226, 311, 311

Citation : (1997) 1 GLJ 292

Hon'ble Judges : H.K.Kumar Singh, J

Bench : Single Bench

Advocate : S.Sailo, K.N.Madhusudhanan, C.Lalramzauva, Advocates appearing for Parties

Judgement

1. By this application under Article 226 of the Constitution of India the petitioner who was serving as a Bus Conductor in the Directorate of Supply and Transport, Mizoram challenges the order dated 12.12.86 by which he was terminated from the service.

2. The petitioner joined the service on 29.6.84. According to the petitioner, on 25.10.86 while on duty in the Mizoram State Transport Bus between Maubuang to Aizawl, one Sri PC Lalmawia, Assistant Research Officer/Line Checker stopped the bus and charged the petitioner for carrying passengers without ticket. On the basis of a report of the said Sri PC Lalmawia, the Director of Supply and Transport by order dated 12.12.86 (Annexure HI) terminated him from the service under subrule (i) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965. The petitioner made a representation (Annexure IV) against the said order of termination but the same has not been decided as yet. Now, the petitioner contends that his termination order was issued without any enquiry as contemplated under Article 311 (2) of the Constitution of India and thus, prays for quashing the said order of termination and for back wages.

3. According to the respondent Government, on the basis of the report

(Annexure A) for carrying ticketless passengers, a preliminary enquiry was conducted and as per report (Annexure B) of the Enquiry Officer it was found that the petitioner collected money from the passengers and also this practice was repeated time and again for which he was warned two times for carrying ticketless passengers and for misappropriating the money he had collected from the passengers and the petitioner being in temporary service, he was terminated under Rule 5 (i) of the Central Civil Services (Temporary Service) Rules, 1965. Thus, Article 311 (2) is not attracted as it was a case of termination simpliciter.

4. Mr. S. Sailo, the learned counsel for the petitioner submits that the petitioner was in regular service so, he cannot be terminated without proper enquiry as provided under Article 311 (2) of the Constitution of India. Again, the learned counsel submits that if the petitioner is found to be in temporary service also, the impugned order of termination though apparently innocuous, the same was based on ground of misconduct, thus the termination order is bad in law for violation of Article 311 (2).

5. The appointment order (Annexure I) itself speaks that the appointment is purely temporary in nature. The petitioner was appointed on 29.12.84 and he was terminated on 12.12.86. There is no material to show that the petitioner became a permanent employee. He had not completed 3 (three) years of service, so no question of acquiring the status of a quasi permanent employee also arose. Thus, the petitioner was only in temporary service at the time of termination. Hence he has no right to the post (see *Purshotam Lal Dhingra vs. Union of India*, AIR 1958 SC 36).

6. The second line of attack of the learned counsel for the petitioner is that the termination order amounted to punishment and the same was based on the ground of misconduct, thus, the order being passed without any enquiry as required by Article 311 (2) of the Constitution of India, is bad in law.

7. The impugned termination order (Annexure III) is reproduced below:

"In pursuance of subrule (i) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, Felix Sequiera, Director of Supply and Transport, hereby terminated forthwith the services of Sri TBC Vulmawia and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing men immediately before the termination of his service, or, as the case may be for the period by which such notice falls short of one month."

Station Aizawl, Dated: Sd/ Felix Sequiera

Director of Supply and Transport, Mizoram, Aizawl."

8. The order is apparently innocuous.

9. It is well known that in every termination of service even of a temporary public servant, there has to be, and always, is a reason. And the reason may be

gathered by opening/lifting the veil even in case of such an innocuous order. In the present case, respondents have disclosed the reason for the termination. In then counter affidavit the respondents have clearly stated that the ground of termination of service of the petitioner is misconduct. The relevant portion of the statements in the 3rd subpara of para No.6 of the counter affidavit is reproduced below:

"It is submitted that as the service of the petitioner was purely temporary and did not complete two years service, he was bound by the provisions of Central Civil Services (Temporary Service) Rules, 1965. Moreover, the grounds of the termination of the service of the petitioner is his misconduct and found him unsuitable for extension of his service."

Again, in subpara No. 1 of para No.7 of the counter affidavit:

"It is submitted that the bus fares collected from the passengers by issuing tickets by the proper authorities is one of the main source of Government revenue. But the petitioner habitually carried passengers who did not possess bus tickets issued by the Transport Department authorities in the Government bus he conducted on tour, he was also found collecting fares from those ticketless passengers and retained the fares with him without submitting to the Government several times."

10. Thus, even according to the respondents, the ground, reason or the basis of the termination was misconduct. Hence the provision of Article 311 (2) is attracted. In the present case an enquiry was conducted by Sri PC Lalmawia, Assistant Research Officer and an affidavit of the said Enquiry Officer is also in the record as filed by the respondents. But the said enquiry was done without the knowledge of the petitioner and also without giving him any opportunity of being heard. Thus, I have no alternative to hold that the termination order which was passed on the basis of the aforesaid enquiry though apparently innocuous, is stigmatic, visiting the petitioner with panel consequence and the same is a punishment. Thus, the order cannot stand for violation of Article 311 (2) of the Constitution of India.

11. The learned Government Advocate submits that the petitioner has not come with clean hands and also that the present writ petition was filed after an inordinate delay. The termination order was passed on 12.12.86 and the present writ petition was filed only on 5.6.93. According to the petitioner, he filed the representation (Annexure IV) on 20.1.87. But according to the respondents no such representation was ever received by the office of the Chief Secretary, Government of Mizoram. In this regard, the respondents have filed a copy of the office record (Annexure I attached to the counter affidavit). Again, the petitioner insists that the representation (Annexure IV) was filed and it is possible that the same might have been misplaced in the office. To this, the learned counsel for the respondents submits that the petitioners have not made any reply or rejoinder controverting the fact in (Annexure I attached to the counter affidavit).

These allegations and counter allegations of facts by the rival parties regarding filing or non filing of representation of the petitioner need not be decided by this writ Court.

12. Again, the learned Government Advocate submits that this delay is inordinate and unexplained, and relied upon the case of Naib Subhedar Lakchhman Das vs. Union of India & others, (1977) 2 SCC 584). In this reported case the petitioner challenged his dismissal order dated 17.5.66 by filing a writ petition in the month of September, 1970, and Supreme Court held that the writ petition was filed after a gross delay for which there was no satisfactory explanation, and therefore, the High Court was justified in dismissing it summarily. The facts and circumstances of the reported case and those of our present case are different and distinguishable. In the reported case the petitioner Naib Subhedar Latehman Das approached the Supreme Court four times challenging his termination order and on rejection of all those petitions he approached the High Court at last and the High Court dismissed the petition on the ground of unexplained delay and Supreme Court upheld the order of the High Court.

13. Limitation Act is not extended in the State of Mizoram. It is also true that provision of Indian Limitation Act is not strictly applicable in writ petition under Article 226 of the Constitution of India. The point for consideration for the writ Court for the exercise of its jurisdiction under Article 226 of the Constitution of India is to consider the facts and circumstances of the case including the right infringed, relief sought for and inaction if any, of the petitioner in approaching the Court. And the Court may not exercise its extra ordinary power under Article 226 of the Constitution of India when it finds that the delay was unexplained and the petitioner was guilty for laches on the facts and circumstances of the case. Here, the submission of the learned counsel for the petitioner that the Limitation Act has not been extended in the State only indicates that the Court may entertain any application considering the nature of the right infringed and on the basis of the attending facts and circumstances of the case and for advancement of justice, is not without force. In this case, the petitioner was terminated from the service without following the procedure prescribed by law. He has lost his job, a means of earning for his livelihood and his family and the learned counsel also submitted for consideration of his case on sympathetic and humanitarian ground. The learned Government Advocate also has not made even a demur that reinstatement of the petitioner in service would result in unsettling of settled things or upsetting of positions amongst the employees in the Directorate. I think it is fit case to entertain the present application and quash the termination order and direct for reinstatement of the petitioner.

14. The petitioner has also claimed for giving back wages. Considering the nature and circumstances of the case, I am not inclined to award full back wages. But back wages is limited to 25% only as he has not rendered any service.

15. From the foregoing reasons the Rule is made absolute. The termination order dated 12.12.86 is quashed. Respondents are directed to reinstate the petitioner

within a period of one month from the date of receipt of the copy of this order. The petitioner shall get all the service benefits except that the back wages shall be restricted to 25%.